

Minutes of the Planning Commission meeting held on Thursday, November 19, 2009, at 6:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Jeff Evans, Chair
Jim Harland, Vice-Chair
Tim Taylor
Ray Black
Karen Daniels
Sheri Van Bibber
Tim Tingey, Community & Economic Development Director
Chad Wilkinson, Community Development Planner
Citizens

Excused: Kurtis Aoki

Mr. Evans opened the meeting and welcomed those present.

APPROVAL OF MINUTES

Sheri Van Bibber made a motion to approve the minutes as corrected from November 5, 2009. Seconded by Karen Daniels.

A voice vote was made. The minutes were approved unanimously, 6-0.

CONFLICT OF INTEREST

There were no conflicts of interest noted regarding this agenda.

APPROVAL OF FINDINGS OF FACT

Tim Taylor made a motion to approve the Findings of Fact for Car2Seek. Seconded by Karen Daniels. Motion passed unanimously, 6-0.

CREEK BEND @ VINE P.U.D./BRIAN TOMSIC - 994 E Corbin Creek Cove, Project 09-89

Brian Tomsic and Shelley Harrison were the applicants present to represent this request. Chad Wilkinson reviewed the location and request for an amendment to the Creek Bend at Vine P.U.D. for consideration to allow removal of part of the existing solid fencing located on the west side of lot #7 adjoining Little Cottonwood Creek. A portion of the existing 6 foot high solid fence was removed on lot #7 which prompted a complaint from the adjoining property owner across Cottonwood Creek. The Land Use ordinance for Planned Unit Developments, Section 17.60.030F Required Conditions states: "Landscaping, fencing and screening related to the uses within the site and as a means for integrating the proposed development into its surrounding shall be planned and presented to the Planning Commission for approval, together with other required plans of the development." 17.060.070 Construction Limitations states: (A) "Upon approval of a planned unit development construction shall proceed only in accordance with the plans and specifications approved by the Planning Commission and in conformity with any conditions attached by the Commission to its approval. (B) Amendments to approved

plans and specifications for a planned unit development shall be approved by the Planning Commission and shown on the approved plans." At the meeting dated August 3, 2006 the Planning Commission granted Conditional Use Permit approval and final approval for Creek Bend at Vine P.U.D. located within the R-1-8 zone. Condition #9 of the Permit states: "Meet the fencing regulations for fencing." The site plan submitted with the development plans for preliminary review by the Planning Commission for approval at the meeting dated June 15, 2006, shows fencing details for the location and height of 6 foot solid fencing. The homes on lot #6, #7, #8 and #9 adjoin Cottonwood Creek at the rear yards. The site plan shows a 6 foot high decorative stone wall at the north side of the property adjoining the Murray Fire station and a 6 foot high solid vinyl sight obscuring fence adjoining lots #1-#7 which was all installed at the time of development.

Alan Prince, developer of Creek Bend at Vine P.U.D., attended the Planning Commission meeting dated August 3, 2006 and commented at that the meeting "that this project will be fully landscaped and fully fenced and stated he agreed to install a fence along the Voorhees property, in addition to the entire project."

Mr. Wilkinson stated that the Community & Economic Development Department recommends a modification to condition #9 to read as follows: Any fencing on the Creek Bend at Vine P.U.D. including the fencing adjoining lot #7, shall be installed and maintained to meet the fence code regulations, and as shown on the approved site plan by the Murray Planning Commission and the applicant gain approval and permits of Salt Lake County Flood Control.

Shelley Harrison, 994 E Corbin Creek Cove, stated the reason they purchased this home is because of the view it provides. She stated in reading the staff recommendation regarding impact and buffers, there is only one adjacent property owner, and that home is half an acre away, and they can't even see the fence from their home but it does block her view. Ms. Harrison stated they are willing to have a fence if necessary, but they would prefer the fencing to be something that they could see over and a 6 foot solid vinyl fence seems punitive on this particular lot. She stated that at the August 3, 2006 Planning Commission meeting, Alan Prince stated he would install a fence along the Voorhees property in addition to the entire project. After that August 3, 2006 date the fence that was installed along the Voorhees property was a small 4 foot rail fence. She stated when they purchased the home from Mr. Prince he indicated to them that the 4 foot rail fence was what was intended and a clerical error had been made on the map indicating a 6 foot vinyl, but in order to appease everyone he went ahead and installed the 6 foot vinyl fence anyway. Ms. Harrison stated that the minutes of previous meetings indicate that Mr. Prince would install a fence along the Voorhees property in addition to the entire project. She stated they prefer to have no fence, but if required, they would like to have a fence that they would still be able to enjoy the view of the river. She stated the Voorhees gave them a letter in August of 2009 indicating that they would be erecting a fence and have installed a snow-type fence along this area that is still in place. Ms. Harrison stated the C C & R's allow for a change of C C & R's with a minimum vote of 10 out of the 13 property owners. She stated they have signatures from 12 of the 13 property owners stating that they agree with their request to not have a fence at this location. She stated at the time they submitted their application there were a couple homes that had not been sold but have since been sold and they have also

obtained those signatures from the new homeowners. She stated the view is beautiful in this area and a solid fence would block this beautiful view.

Brian Tomsic, 994 East Corbin Creek Cove, stated their home is setback 15 feet from the edge of the river and a solid vinyl fence would block their beautiful view of the river and helps during the spring when the river is full to watch for potential flooding issues. He stated the people behind them live half an acre away and they wouldn't be immediately affected and they do not have access to the property and they have to walk across the river to even get to this area.

Ms. Harrison stated that they planted grass in this area and have been maintaining this area, but over the past 40 years this area has been nothing but weeds. She stated when they removed the fence they planted Canna lilies to maintain the property line but at no point were they attempting to erase or change the property lines. She stated they love their property and the area and they wish to enjoy it and anything they have done, has been with the intentions of beautifying and improving the area. She stated in order for people to access this area, they would have to cross the bridge and open their gate and it is totally enclosed. She stated there is no one living in lot #5 of this P.U.D., and the owners currently live in Virginia. She stated these property owners are intending to replace the fence with wrought iron fence or something they could see through and that when you live adjacent to a river it is nice to see the river.

Karen Daniels asked when the property was purchased if the Tomsic's realized it was in a planned unit development. Brian Tomsic responded in the affirmative. Ms. Harrison indicated stated they did have conversations with Alan Prince regarding the fence at the time they purchased the property who relayed the history of the fence issues. After he installed the fence along the Voorhees property, he installed the rail fence. They were told by the people who originally owned the property that the rail fence was what was installed and what was intended.

Karen Daniels stated the Planning Commission approved a 6 foot fence and is also what Mr. Prince agreed to install at the time the project was approved. She stated that the fencing regulation is part of the P.U.D. approval.

Jim Harland asked if the fence existed at the time the Tomsic's purchased the property. Ms. Harrison responded in the affirmative. She stated that at the time they purchased the property Mr. Prince informed them that they also would own the fence. She stated their great room has a large window that their view is of the fence.

Ray Black stated that the fencing is a city ordinance and when you tear down a fence you are in violation of the ordinance which could have a penalty.

Jeff Evans asked for clarification about the fencing regulations. Chad Wilkinson responded that the planned unit development ordinance requires the fencing, landscaping and approved as a cohesive plan with specific architectural style of buildings, etc. The intent is that it would be a cohesive development that compliments one home from another and has consistent standards. He stated that the planning commission approves materials, locations and other aspects of that and so indirectly it is in the ordinance that the commission's approval of whatever is proposed is essentially

the law for that particular development. The height and type of fence that was proposed and approved was a solid vinyl fence. Mr. Wilkinson stated the C C & R's is a private agreement between the homeowners; the planned unit development approval is a separate approval/agreement between the city and the developer. The C C & R's do not supersede city approvals and ordinances. The planning commission was specific to a type and location of fence. Mr. Wilkinson stated that violation of the zoning code is a Class C Misdemeanor and is a \$750 fine per day of violation.

Mr. Evans stated if the property owner(s) wish to install a wrought iron fence, it would be in violation of the city's approval.

Mr. Evans opened the meeting for public comment.

Marge Jensen, 1078 East 6165 South, stated she is the president of the homeowners association for the Vine Street East Condominiums, which is adjacent to this property. She stated Vine Street condos have existed for over 30 years and connects to their property. She stated when Mr. Prince approached their board to allow a fence, she met with the real estate brokers, Tanner Ditch Company, the grounds and buildings person from the Vine Street Condo Association and they agreed on a specific fence and specific color. When Mr. Prince started building he put the fence up and they removed the necessary trees for installation and about a month or so later the 6 foot fence had been removed. She stated they contacted their attorney and had legal discussions with Mr. Prince and in the meantime he took the fence posts out and put new posts in for a 3 foot rail fence which was not conducive to their property because they have a very quiet community and with open fences they would be open to unwanted traffic and animals. She stated that Mr. Prince later indicated that he would reinstall the 6 foot vinyl fence if they were to pay for it themselves. She indicated if they were desirous to install a fence it would be a 9 foot high orange fence with a "no trespassing" sign facing Mr. Prince's property. Through other legal discussions, Mr. Prince then reinstalled the 6 foot vinyl fence.

Todd Reid, 6112 South Vine Creek Bend, stated he is in agreement with the previous comments except how this fence issue was proposed. He stated he is the president homeowners association for the Creek Bend @ Vine P.U.D. He stated that the issues regarding fencing are providing a safe environment and also enjoyment. He stated the type of fence could be a different fence. He stated even if a solid 6 foot high vinyl fence was required and approved, there is the ability to request an amendment by the commission. He suggested that the homeowners work together to accommodate the desires of the homeowners and meet the purpose of a fence.

Ron Voorhees, 5495 South White Springs Drive, stated he is the co-trustee of the property adjacent to the south. He stated he is speaking in behalf of his mother who owns the property to the south. He stated he sympathizes with Brian Tomsic having been misinformed regarding removal of the fence, but the minutes of the Planning Commission meeting of August 3, 2006, states "Mr. Prince presented renderings of a similar development 'Sandy's Grove' at 9800 South 1700 East." He stated that Mr. Prince presented photos showing a 6 foot vinyl fence and Mr. Voorhees also visited that particular property to ensure the exact type of fence and the accuracy of the renderings. He stated if the fencing is amended, there will be the potential of every homeowner

requesting a change for an exterior wall or fence. This fence can be reinstalled by those who knowingly took it down in violation of the city code requirement and their recorded contractual obligations of this planned unit developments declaration of covenants, conditions and restrictions and the easement and maintenance agreement. He stated they did not fight the zoning change from A-1 to R-1-8 but they have asked that this development be completed properly under its committee's direction. He stated they worked closely through the planning commission meetings and with Mr. Prince to ensure that the development was fenced for community safety. The dam on Little Cottonwood Creek and the irrigation had a ditch box for the Brown Ditch and are located on their property and are within feet of the Creek Bend @ Vine boundary. These can be deadly hazards to children and unknowing adults. This fence was also planned as a means of integrating this development into its surroundings which borders their agriculturally zoned property. Because their property is zoned agricultural, their lot must be one acre in size to meet the city code and comparing this with the Creek Bend @ Vine P.U.D., the average lot size is just over 7,000 sq.ft. He stated their feeling of being "closed in" was their choice by electing to purchase property within this P.U.D. Mr. Voorhees asked that the fencing be reinstated, that the city adhere to the approval requiring the fence, and deny this proposed fence amendment.

Jeff Evans asked Ms. Jensen about trespassing issues and the quietness of their Vine Street East Condominium development with regard to fencing. Ms. Jensen responded that Mr. Tomsic's area is not directly visible from their grounds unless they walk around the creek and they cannot see this particular area. She stated they are objected to having the area remain open and wish to prevent animals coming through and also trespassers. She stated visually it would look best if the fence is consistent along the creek.

Shelley Harrison stated that their application submittal is proof that they are wishing to abide with the city's regulations and they applied when they were notified that removal of the fence was a violation. Brian Tomsic asked if the commission members could visit the site so as to visualize their intentions and desires prior to making a decision. Karen Daniels responded that many of the planning commission members have been to the site.

Jeff Evans stated that his recollection of this P.U.D. approval included Mr. Prince showing photos of a similar project in Sandy showing fencing, etc., and that fencing was an issue of safety and security. He concurred with Ms. Jensen comments that different fence types along the P.U.D. would not be as appealing.

Jim Harland stated if the type of fence is changed, the homeowners association would also need to be in agreement and someone would need to pay for the fence.

Marge Jensen asked if different types of fencing is allowed, the Creek Bend @ Vine homeowners would have to pay for the fence and they are not open to paying for a different fence.

Todd Reid stated the front of the entrance to the P.U.D. is a stone wall. He stated that they haven't taken this to the homeowners asking for a change, but it would not be in the

best interest to have different types of fencing. He stated he would like to have the homeowners discuss this and make a decision.

Jeff Evans commented that he would entertain a motion to deny this request based upon the ordinance and the P.U.D. approval, but possibly review this proposal in the future once the homeowners have met and decided on a uniform fencing change. Chad Wilkinson stated this request involves two issues: meeting the fence code and also meeting the approval that was issued by the planning commission in 2006. He stated that other homeowners may make application for different amendments in the future.

Ray Black made a motion to deny the request for removal of part of the existing solid fencing located at the west side of lot #7 adjoining Little Cottonwood Creek and approval of the staff modification for condition #9. The subject location is 994 East Corbin Creek Cove. Seconded by Jim Harland.

Call vote recorded by Chad Wilkinson.

A__ Karen Daniels
A__ Sheri Van Bibber
A__ Jim Harland
A__ Jeff Evans
A__ Tim Taylor
A__ Ray Black

Motion passed, 6-0.

ORDINANCE TEXT AMENDMENT - FIRECLAY VILLAGES – Proposal for Amendments to the Fireclay Transportation Master Plan and Transit Oriented Development District Ordinance, Project 09-81

Jim Allred was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for this proposal. The Commission members were presented updated site plans and renderings. Mr. Wilkinson stated this is an amendment to the Master Transportation Plan for the Fireclay Transit Oriented Development District and an amendment to the standards of the existing TOD ordinance related to reduction in requirements for residential parking west of Trax. This amendment will change some of the standards for development of roadways and related to parking in the ordinance. These changes have been identified in order to allow this development to go forward. The actual approval of the development will come at a later date. The original plan showed diagonal parking along the streets and the streets were originally proposed to be private. The applicant made changes based on feedback received at the Redevelopment Agency meeting. The major change is that the streets are proposed to be public streets and the elimination of diagonal parking.

Mr. Wilkinson stated the majority of this proposal is in regards to street changes. He reviewed the proposed changes:

1. Elimination of 4235 South Street (street furthest to the north). This street did serve mostly as an access to the open space to the north and is somewhat

- redundant and staff felt it could accomplish what the purpose of that street was by having some good pedestrian connectivity up there with a nice pedestrian pathway.
2. Modification of 125 West Section to allow for meandering trail
 3. Modifications to 200 West
 - a. Limited reduction to landscape strip between the trail and roadway
 - b. Zero-foot front setback (only along 200 West)
 - c. 6-foot sidewalk and 5.5 foot planter strip between 4400 South and 4350 South.
 4. Modifications to 4400 South Street
 - a. Option B for ± 270 feet
 - b. Zero-foot front yard setback for ± 270 feet
 5. Change 4250 South from Couplet to Residential Street
 6. Allow Option B for 4350 South
 7. Increase curb radius on Fireclay Avenue to 28 feet.

Mr. Wilkinson clarified that a one-way circulation is not possible on 4250 South and would essentially create a dead end at 4250 South and is not appropriate. The same effect can be reached with a two-way residential street with the possibility in the future to do a couplet where there would be adequate width. Therefore, staff is recommending a two-way residential street for 4250 South.

Mr. Wilkinson explained item #8 that the applicants have requested to change is the parking rate which is essentially what is in the current code for structured parking within the TOD. If more than 75% of parking is proposed within structures, the applicant can use the rates of 1.125 spaces per unit for 2-bedrooms or less; 1.4 spaces per unit for 3-bedrooms or more. Parking is a sensitive issue and in reviewing this proposal all of the properties are within $\frac{1}{4}$ mile of the Trax station which is the standard for pedestrian connectivity to a transit station and none of them are over $\frac{1}{4}$ of a mile from the Trax station. This shows that this should be viewed differently with regard to the parking regulations. Secondly, there are other parking rates within the Salt Lake valley where the parking rate is much lower in these transit oriented districts and it works. Third, there are existing developments that utilize lower parking rates which have also been successful. Fourth, the TOD allows for certain circumstances for different regulations and this area west of the Trax line is unique and the proposed reduction is appropriate for this area. He stated on a portion of the Fireclay Avenue of the development the applicants are requesting an increase in the curb radius which will allow for greater access by Murray City vehicles, but this is limited to the one street and the others will remain 10 feet. The 10 foot radius allows for the streets to be closer together and provides for pedestrian connectivity and also slows traffic. The Community & Economic Development staff recommends approval for these changes.

Mr. Wilkinson stated the Redevelopment Agency of Murray City approved this proposal on Tuesday, November 17, 2009. The final decision will be made by the city council at a future hearing date.

Karen Daniels asked for a clarification on 200 West to be zero foot setback. Mr. Wilkinson responded there is a zero foot setback proposed for the entire length of 200 West, but the planter strip is reduced from 9.5 feet to 5.5 feet for only a short segment, along with a 6 foot sidewalk from 4400 South to 4350 South.

Jim Allred, 5151 South 900 East, Murray, stated he is the architect for this project Fireclay Associates. He stated they have been working with staff to reach agreements for this proposal. He stated the major issues have been resolved and these are more of the minor issues.

No comments were made from the public.

Jim Harland made a motion to send a positive recommendation to the city council for the proposed amendment to the Fireclay Transportation Master Plan and the Transit Oriented Development standards of the zoning ordinance which include the 8 modifications listed in the staff report. Seconded by Sheri Van Bibber.

Call vote recorded by Chad Wilkinson.

A Karen Daniels
A Sheri Van Bibber
A Jim Harland
A Jeff Evans
A Tim Taylor
A Ray Black

Motion passed, 6-0.

P & F RESTAURANT MANAGEMENT – 33 West 4500 South

Kent Foote as the applicant present to represent this request. Chad Wilkinson reviewed the request for a general plan amendment from Residential Single Family-Medium Density to Residential Business and a zone change from R-1-6 to R-N-B. The property is located at the intersection of 4500 South frontage road and Box Elder Street and west of Auto Boulevard. There is a small piece directly to the north-east of this property that is also currently zoned R-1-6, but is primarily a road right-of-way with no dwelling. The general plan calls for the future land use area as single family residential-medium density. However, the general plan calls for adoption of the R-N-B zoning on 4500 South east of State Street, but does not specifically identify this area for R-N-B zoning. However, the purpose of creating an R-N-B zone as listed in the general plan is to provide a transitional zone between existing commercial and residential neighborhoods. Although the general plan does not specifically designate the property in the Residential Business land use category, the individual characteristics of the property are consistent with the locations described in the General Plan for Residential Business. The property

is surrounded by public streets on three sides and is not as well suited for residential use as other properties in the neighborhood. In 1995 there was an application for a change in zoning to C-D-C which was denied. Since that time, there have been many significant changes giving justification for the R-N-B zoning. The General Plan provides for flexibility in implementation and execution of the goals and policies based on individual circumstances. The requested change has been carefully considered based on characteristics of the site and surrounding area and policies of the General Plan. The General Plan supports adoption of the R-N-B as a transition between high traffic arterial streets and residential neighborhoods. The R-N-B zoning proposed will provide for a good transition between commercial zoning to the north and east and the residential neighborhood. The uses allowed and design standards provided in the R-N-B will mitigate impacts to the adjoining neighborhood. Therefore, staff recommends positively for a General Plan amendment and zone change as requested.

Karen Daniels asked if the property is changed to R-N-B, will the buffer fence be required. Mr. Wilkinson responded the fencing would be required at the time the applicant submits for site plan approval or conditional use permit approval.

Jim Harland stated this is a unique piece of property and seems like it fits the R-N-B zoning perfectly, but it will create somewhat of a zoning island.

Tim Taylor asked if the zoning will remain R-1-6 for the property to the north-east which is mainly a right-of-way and if the right-of-way will be city owned. Mr. Wilkinson responded that the city will need to evaluate this and it may be desirous to "clean up" the zoning for this property and have it also changed.

Kent Foote, 11288 Eagle View Drive, Sandy, stated P & F Restaurant Management Company is a company that has been in business for 23 years and has a group of Arby's Restaurants and their current office has been downtown for quite sometime and they are desiring to have a more central location with close access to the freeway. He stated this property would be used as a 1,000 sq.ft. office and bookkeeping use and a conference room with normal business hours generally 8 a.m. to 5 p.m. They currently have three employees. He stated the R-N-B zoning fits their use nicely.

Ray Black asked how many persons come to the site per day. Mr. Foote responded that he will work here along with his son who is the Director of Operations for the stores and there may be a couple others coming to the site.

Pete Robbins, property owner adjacent to the south of the subject property, stated he is not opposed to this request but was unsure if he desired to have a solid masonry wall along the property line. Mr. Evans responded typically a solid masonry wall is installed between an R-N-B zoning and a residential zoning. He suggested the solid masonry wall taper in height as it gets closer to Box Elder Street for visibility purposes. Mr. Wilkinson commented that the solid masonry wall is required to taper down to 3 feet in height towards the street to provide for visibility. A solid wall is also required along the south boundary line.

Tim Taylor asked if the applicant could request a fence variance. Mr. Wilkinson responded the Board of Adjustment is the body that reviews variance requests and the

applicant may apply for a variance, however, typically the variances have not been granted to keep consistency with providing a nice buffer. He stated the codes states "masonry" which does allow for a few different types of solid wall.

Lois Hodgkinson, 4535 South Box Elder Street, stated she is not opposed to this proposed zoning but did not want the zoning to encroach further into Box Elder Street.

Mr. Foote asked the setback for the 3 foot wall height from the sidewalk. Mr. Wilkinson responded the general answer for nonresidential fencing requires a 10 foot setback for the 6 foot height and the first 10 feet of setback would be at the 3 foot height, but the R-N-B zoning requires a 20 foot setback. He stated this would need to be researched further.

Tim Taylor made a motion to send a positive recommendation to the city council for a General Plan amendment from Residential Single Family-Medium Density to Residential Business and a zone change from R-1-6 to R-N-B for the property addressed 33 West 4500 South. Seconded by Karen Daniels.

Call vote recorded by Chad Wilkinson.

A__ Karen Daniels
A__ Sheri Van Bibber
A__ Jim Harland
A__ Jeff Evans
A__ Tim Taylor
A__ Ray Black

Motion passed, 6-0.

OTHER BUSINESS

There was no other business. Meeting adjourned.

B. Tim Tingey
Director of Community & Economic Development